

L I C E N S E

An exclusive and revocable license is hereby granted by the City of Sunnyvale, a municipal corporation of the State of California, to BG Tennis, Inc., a California corporation, as Licensee, to manage, operate and supervise, the Sunnyvale Tennis Center, the Sunnyvale Tennis Center Pro Shop, court reservation system for Sunnyvale Middle School and Fremont High School, Tennis Center Food Services, and the Sunnyvale Department-Sponsored Tennis Program, for a term beginning on 12:01 a.m. on January 1, 2004, and ending at 12:01 a.m. on January 1, 2012, unless sooner terminated subject to the conditions contained in this license.

This agreement succeeds all prior agreements formerly in effect between the parties.

SECTION 1. DEFINITIONS.

As used in this License, the following words and phrases, unless provided otherwise, shall have the following meanings:

“Center” - Sunnyvale Municipal Tennis Center, consisting of sixteen (16) tennis courts located at 755 South Mathilda Avenue, Sunnyvale, California.

“City” - City of Sunnyvale

“City Council” - City Council of the City of Sunnyvale.

“Department” - Department of Parks and Recreation of the City of Sunnyvale.

“Department-Sponsored Tennis Program” - The regular system of group and private tennis classes offered to the public by the City on a fee basis at the Center and on other public courts under the terms of this agreement.

“Director” - Director of the Department of Parks and Recreation of the City of Sunnyvale.

“Employee” - any person employed by and paid solely by Licensee, for any of the following purposes: (1) to give lessons and instructions in tennis; or (2) to assist in the day-to-day operation of the Department-Sponsored Tennis

Program, Center or Pro Shop, including collection of monies. "Employee" may include Tennis Professional, if Licensee hires a person other than Licensee's president and chief executive officer, Brian M. Garrow ("Garrow") to act as such.

"Licensee" - Manager and operator of the Center, Pro Shop, court reservation system for Sunnyvale Middle School and Fremont High School, Tennis Center Food Services, and Department-Sponsored Tennis Program.

"Players" - Members of the tennis-playing public using the Center.

"Shall" - The word "shall" is mandatory.

"Pro Shop" - Tennis Pro Shop including locker room and concession areas operated in conjunction with the Sunnyvale Tennis Center.

"Tennis Center Food Services" - The service to be performed consisting of sale of food and beverages at the Las Palmas Tennis Center, Sunnyvale Middle School and Fremont High School.

"Tennis Professional" - The person responsible for supervision over the use by City of the tennis courts at the Sunnyvale Middle School and Fremont High School.

"Contract Instructor" - Any person who secures a contract with Licensee for the express purpose of providing tennis instruction under authority of Licensee and in accordance with this License Agreement.

SECTION 2. EXCLUSIVE USE.

In order to exercise the privileges and rights hereby licensed, and to perform the duties and obligations herein imposed, City grants to Licensee the exclusive use of the Pro Shop and Tennis Office/Equipment storage area to be occupied only for tennis sales, repairs and as an office, and for no other purpose and the exclusive use of the food services building upon its completion for sale of food and beverages and for no other purpose. Licensee shall occupy and operate the Pro Shop and the food services building as a licensee and not as a lessee. Licensee is granted the exclusive right to provide all tennis instruction or lessons to be provided on a fee basis, either at the Tennis Center

or at other public courts under the ownership or control of City other than those provided by City or its employees in connection with programs authorized by the Director upon consultation with the Licensee.

SECTION 3. PRIVILEGES AND DUTIES OF LICENSEE.

Licensee shall exercise each privilege and right hereby licensed and perform each duty and obligation imposed herein in full compliance with the Sunnyvale Municipal Code and other ordinances of City, and all applicable laws of the State of California and the United States of America.

- A. Licensee shall cause Garrow, to devote his entire working time to:
1. Operating, managing and supervising the Center, including but not limited to:
 - a) Enforcing all rules and regulations;
 - b) Posting notices of class times and tennis court usage on City provided boards at each tennis location at least one week in advance of each session;
 - c) Regulating the play and conduct of the players;
 - d) Policing the Center, preserving order, and providing for security of the Center, including keeping trespassers off the Center and preventing injury to the Center, by players and others;
 - e) Keeping the Center open for that number of hours set by the Director;
 - f) During operating hours inspecting and maintaining locker rooms when necessary;
 - g) Keeping lavatories open at all times that the Center is open for play or the Pro Shop is open for business; cleaning all restrooms and showers and keeping lavatories closed and locked at all other times;
 - h) Maintaining the interior of locker rooms;

- i) Maintaining tennis courts, and particularly regular washing and sweeping of the same;
- j) Repairing and replacing any nets as required in order to maintain tennis courts in good playing condition;
- k) Preventing any person from playing without first having paid court rental fees;
- l) Acting as starter of play;
- m) Collecting all fees, charges and receipts from the Pro Shop, for individual and group tennis instruction at the Tennis Center and at other tennis courts used in connection with the Department-Sponsored Tennis Program, and for all tennis court rentals and reservations at the Tennis Center. All fees, charges, receipts and any other monies collected by Licensee shall be processed through cash registers provided by City and in the manner prescribed by City. Licensee shall:
 - (1) Prepare a daily financial and use report of the number of plays and type of court used (day, night or weekend rate) and the amounts collected for each type of play;
 - (2) Be responsible for the collection of any check or other negotiable instrument accepted by Licensee, its employees or agents, in payment of fees (or the portion of gross revenue required to be paid to City). In the event any such check or negotiable instrument is uncollectible, Licensee shall pay the amount of such check or negotiable instrument to City;

- (3) Hold in fiduciary capacity, and not make any personal or other use of fees, (or the portion of gross revenue, if any) required to be paid by Licensee to City, received or collected by Licensee;
 - (4) Be responsible for any shortages in monies collected on behalf of and required to be paid to City.
 - n) Providing private lessons and instructions in tennis and all services customarily provided by a Tennis Professional either by Garrow personally or by employees or contract instructors. (Not more than three courts shall be used at any one time for private lessons at the Tennis Center. There will be no court rental fee for Licensee's use of the three designated courts at the Tennis Center. When courts are used at other sites for instruction, one or more courts at such sites shall be left open for public play.);
 - o) Providing lessons and instructions in tennis at an acceptable level to the public and all related services as required by the Director;
 - p) Scheduling tournaments and other tennis activities at the Center with special interest groups and private groups so as to assure the best overall, well-rounded tennis program for the community.
2. Operating, managing and supervising the Pro Shop, which shall include but not limit Licensee to:
- a) Maintaining, selling and renting a stock of merchandise, supplies and equipment sufficient to meet customer demand and suitable for use at the

Center including, for example, clothing, tennis rackets, tennis balls, tennis shoes, books and other tennis equipment and supplies; provided, that the makes or lines of tennis merchandise, supplies and equipment so handled shall be representative, in quality, price and type, of those makes and lines of tennis merchandise generally available to the public in this area;

- b) Maintaining and operating a business for the repair of tennis rackets and other tennis related equipment;
- c) Preserving proper order in or about the Pro Shop and premises;
- d) Providing for security of the Pro Shop;
- e) Keeping the Pro Shop open for that number of hours set from time to time by the Director;
- f) Maintaining and operating vending machines for the sales of food and beverages provided that within ten (10) days following receipt of written notice from City that a particular machine is not satisfactory to City for whatever reason, Licensee shall remove that machine forthwith;
- g) Furnishing, and paying all charges for, telephone services which relate to the Pro Shop operations;
- h) Furnishing and paying all costs in connection with maintaining the interior of the Pro Shop together with routine maintenance thereof, the janitorial services to include, but not limited to, cleaning of windows (inside and outside), and the routine maintenance of interior furnishings, equipment and fixtures; provided, however, that Licensee shall keep the Pro Shop locker

areas and appurtenances in a clean and sanitary condition and reasonably free from rubbish during operating hours, to the satisfaction of City, which expressly retains and reserves the right to inspect the Pro Shop for this purpose. Licensee shall provide high quality fixtures, counters, showcases, equipment and other interior furnishings or devices required to operate the Pro Shop.

i) Furnishing and paying all charges for office supplies.

3. Operating, managing and supervising the food services building, which shall include but not be limited to:

a) Maintaining and selling a reasonable stock of food and beverages, confections, and other articles which are of standard quality and are of such purity and content as to comply with applicable state, federal and local law.

b) Preserving proper order in the food services building.

c) Keeping the food services facilities open to the public for those hours Licensee deems appropriate.

d) Retaining during open hours for food services a manager authorized to represent and act for Licensee pertaining to the operation, management and supervision of the food services facility. Licensee shall keep City informed in writing of the identity of such person. Nothing herein shall prevent Licensee from acting as manager.

e) Providing prompt, clean, courteous and efficient service.

f) Providing City with reasonable access to and the right to inspect all menus, lists, portions and schedules of rates or prices for services within the food service

building and the right to sample foods and beverages at reasonable intervals at the cost and expense of City. If City raises objections to the condition of the building, the quality of the food, articles sold, or character of the service, Licensee covenants to discontinue and remedy all objectionable practices upon demand of City.

- g) Meeting not less than once per calendar year with an authorized representative of City to discuss and review the operation of the food service facility, and to jointly review and evaluate the quality of service and building maintenance for the previous year.
- h) Following the procedure for handling complaints established by standard operating procedure guidelines of City. In this regard, the parties recognize that the Director is designated to represent the Department in resolving all such complaints.
- i) Authorizing the Director or his or her designee to inspect the premises not less than twice per year to determine whether Licensee is complying with the requirements of this section of the License.
- j) Keeping all fixtures and equipment within those portions of the food services facility clean, neat, safe, sanitary and in good order at all times.
- k) Storing all waste matter, garbage and refuse in a manner satisfactory to the Director, and arrange for the daily disposal thereof at the expense of Licensee.
- l) Comply with all requirements of City, or State Department of Health Services, or measure in health and sanitary regulations adopted by any legal

authority, and grant access for inspection purposes to any duly authorized representative of the State Department of Health Services or City.

m) Collecting all fees, charges and receipts from the food service facility. All fees, charges, receipts and other money collected shall be through cash registers provided by City. Licensee shall:

- (1) Prepare a daily financial report of sales of food and beverages;
- (2) Be responsible for the collection of any check or other negotiable instrument accepted by Licensee, its employees or agents, in payment of fees (or the portion of gross revenue required to be paid to City). In the event any such check or negotiable instrument is uncollectible, Licensee shall pay the amount of such check or negotiable instrument to City;
- (3) Hold in fiduciary capacity, and not make any personal or other use of fees, (or the portion of gross revenue, if any) required to be paid by Licensee to City, received or collected by Licensee;
- (4) Be responsible for any shortages in monies collected on behalf of and required to be paid to City.

4. Providing the following services through a Tennis Professional, who shall be Garrow or an employee or contract instructor of the Licensee:

a) Scheduling the reserved use by the public of the tennis courts for tournament play and otherwise at the

Sunnyvale Middle School and Fremont High School, when such courts are neither reserved for school use nor open to the public without reservations.

- b) Collecting all fees for such reserved use of such courts, in the amounts established by the Director of Parks and Recreation or his designee.
- c) The determination of when such courts are to be open to the public solely on a reservation basis is to be made solely by City in accordance with written guidelines established by City, as they may now exist or be amended.

5. Operating, managing and supervising the Department-Sponsored Tennis Program:

- a) Licensee shall organize, establish and conduct a municipal program of recreational tennis instruction at the Center and on other public courts within the City designed by the Director sufficient to meet the demand therefore, known as the Sunnyvale Department-Sponsored Tennis Program. Licensee covenants that the municipal tennis instruction program shall be performed by professional personnel and certified instructors, all of whom have had extensive training in the conducting of course of instruction similar to those required under this License.
- b) The services to be performed by Licensee through Garrow or contract instructors shall include, but not be limited to, the following:

- (1) Training, selecting, supervising and assuming responsibility for court conduct, appearance and teaching ability of contract instructors.
- (2) Providing enough competent contract instructors, as determined by registration lists, to minimize waiting lists;
- (3) Furnishing tennis instructional workbooks to participants;
- (4) Furnishing all tennis balls as necessary to provide adequate instruction;
- (5) Providing such teaching aids as may be necessary;
- (6) Having contract instructors appropriately dress for class instruction in a uniform approved by the Director;
- (7) Completing proper registration procedures for all players registering at the Tennis Center to participate in the Department-Sponsored Tennis Program

c) Licensee shall register all participants, collect all registration fees, and maintain accurate records of registration. In connection therewith, Licensee shall make available to participants mail-in, phone-in and walk-in registration processes.

B. In connection with the foregoing operations, Licensee may employ at its sole cost and responsibility such employees as it deems necessary; provided, however, that:

1. Within ten (10) days following receipt of written notice from City that a particular employees of Licensee is not

satisfactory to City for good cause, Licensee shall dismiss that employee forthwith; and

2. No employee of Licensee shall be deemed to be an employee, agent or representative of City at any time or for any purpose whatsoever; and
3. Licensee shall require all employees to be neatly dressed and courteous at all times, and to refrain from boisterous or objectionable conduct around and about the Center, Pro Shop, food services building, or other tennis courts used as part of the Department-Sponsored Tennis Program.

C. Licensee shall in addition to any of the foregoing duties:

1. Obtain and pay for any permit or license required by the Sunnyvale Municipal Code (or as hereafter amended) or any other ordinance, or law of the State of California or the United States of America; and
2. Pay any and all taxes including, but not limited to, personal property taxes, and sales and use taxes assessed against Licensee, or its possessory interest in the Center, Pro Shop, court reservation system for Sunnyvale Middle School and Fremont High School, Tennis Center Food Services, or Department-Sponsored Tennis Program, or all of them or on its property, including inventories used in performing its duties and obligations under the License, for whatever purpose in connection with operation of the above.
3. Honor the rights of participants to waiver of fees established pursuant to SECTION 4.A.15. Licensee shall keep accurate records of all fee waivers and shall provide City with such records not later than ten (10) days after the end of each calendar quarter for reimbursement.

4. Submit to the Director not later than the 15th day of February of each calendar year a written marketing plan for facility rentals, program enhancement and merchandising. Said plan shall include specific goals, objectives, policies, methods, programs and activities designed toward significant increases of the following:
 - a) Sales revenues from the Pro Shop;
 - b) Public participation in, and revenues from, individual and group tennis lessons offered by Licensee and its employees at the Tennis Center and other public tennis courts under the ownership and/or control of City;
 - c) Public use of, and revenue from, public tennis courts of the Tennis Center.
- D. Licensee shall not do any of the following without having first obtained the written consent of City thereto:
1. Install or permit installation or use of any pinball machine, video game, vending machine or similar equipment;
 2. Attach, hang or otherwise affix any sign or advertising matter on the exterior of the Pro Shop, food services building or anywhere in the Center;
 3. Allow any newspaper rack or other sales device to be placed and maintained outside the Pro Shop or food services building, whether attached thereto or free-standing, or anywhere in the Center, except as authorized herein;
 4. Permit third parties to display or sell goods, wares or merchandise either within the interior or exterior of the Pro Shop, food services building, or anywhere in the Center;
 5. Accord to any individual, group or organization any special privileges. The foregoing includes but is not limited to

discounts on sales merchandise other than in connection with store-wide sales open to all persons. Individuals, groups and organizations will use the courts according to a general reservation system or on a first come, first served basis, whichever is appropriate, without discrimination.

6. Allow any person to utilize the courts or any facilities at the Center unless payment of the appropriate fees has first been made;
7. Assign or transfer this License or any of the rights or privileges herein licensed, or any part thereof, voluntarily, involuntarily or by any process of law. For purposes of this SECTION 3.D.7., a "transfer" shall include any sale, assignment, transfer or other change in the stock ownership of Licensee such that Garrow is not the sole shareholder of Licensee, including any exchange of stock or merger or other reorganization transaction.
8. Make any material alterations, changes or additions to the Center, Pro Shop, food service building or other facilities subject to this License;
9. Make any alterations, changes or additions to the Center, Pro Shop, food services building or to any fixtures or equipment owned by City without first having obtained written consent of City therefor, provided that any alterations, changes or additions consented to shall be made at the sole cost of Licensee and shall become the property of City upon termination of this License;
10. Let, sublet or assign the Center, Pro Shop, food services building, or right to conduct the Department-Sponsored Tennis Program, or any portion thereof, except as may be permitted pursuant to SECTION 3 D.7;

11. Commit, permit or allow any nuisance or waste in, or injury to the Center, food services building or Pro Shop or any portion of either, or to permit the use of the Center, food services building or Pro Shop for any illegal or immoral purpose;
12. Permit Garrow to have any financial or other interest in the control, operation or promotion of any other Tennis Center or tennis establishment located within ten (10) miles from the Sunnyvale Tennis Center, it being the intent of the City of Sunnyvale that the management and operation of the Center, Pro Shop, court reservation system for Sunnyvale Middle School and Fremont High School, Tennis Center Food Services, and Department-Sponsored Tennis Program shall be the sole and full-time occupation of Garrow within the immediate area;
13. Permit Garrow to become an officer or member of any tennis club or organization of tennis players formed or to be formed at the Center or in any organization in which participation would conflict with the orderly and efficient operation of the Center or Pro Shop and particularly which would involve the granting of playing privileges;
14. Bind or attempt to bind City to any contracts or other obligations of any nature.

SECTION 4. DUTIES OF CITY.

- A. City shall, in conjunction with Licensee's service, do the following:
 1. Publicize the Department-Sponsored Tennis Program in the Department's "Activities Guide";
 2. Reimburse Licensee for waivers of fees honored pursuant to SECTION 3.C.3;

3. Provide signs upon which notices of class times and tennis court usage at each teaching location shall be posted;
4. Work with the Licensee in the promotion of tennis tournaments and tennis programs as related to its regular Department-Sponsored Tennis Program;
5. Furnish adequate facilities for storage of inventory, merchandise selling area, food services equipment, office space and supplies;
6. Provide adequate space for registration activities, court reservations and promotion of the Department-Sponsored Tennis Program;
7. Prescribe the form of court rental fees records required in connection with the operation of the Center;
8. Pay all charges for utilities furnished other than those to be paid for by Licensee;
9. Provide cash registers for collection of all monies;
10. Maintain the Center and appurtenant structures, including courts, tennis posts and nets, fences, grounds and adjacent improved off-street parking areas;
11. Maintain the exterior of the buildings (except window cleaning) including, but not limited to, keeping all locks and fasteners in a state of repair;
12. Repair and replace all windows within the Pro Shop or food services building broken other than as a result of any act of neglect by Licensee; and
13. Determine rules and regulations for operation and supervision of the Center including, but not limited to (a) the minimum number of hours of play for which the Center is to be kept open each day and each week, (b) the minimum number of hours the Pro Shop and locker areas are to be

kept open each day and each week, and (c) the system of handling reservations and other procedures governing the priority and use of the courts.

14. Fix, by the Director of Parks and Recreation or his designee, the amount of all fees including, but not limited to, court rental.
15. Determine, as established by the Director of Parks and Recreation or his designee, when fees may be waived for specified classifications of the customers of the Center, due to economic hardship or other reasons.

SECTION 5. PAYMENTS TO CITY, RECORDS AND ACCOUNTS.

- A. Licensee shall install and maintain a system of records and accounts approved by the Director of Finance of City. Licensee shall permit City through its designated representatives to inspect such accounts and all other records of Licensee at any time upon demand. When financial records and accounts materials are to be inspected by the City, Licensee shall provide those records and materials within 48 hours' notice. On or before the 15th day of each month during which this License remains in force, Licensee shall deliver to City a statement showing the total amounts of money collected or received by Licensee from all sources during the preceding calendar month.
- B. Licensee, in consideration of the privileges and rights allowed by this License, shall pay to the City the following sums:
 1. A monthly amount equal to Seventy-six Thousand Dollars (\$76,000.00) per calendar year. The monthly amount will be adjusted each year by the percentage increase of court reservation fees approved by the City, not to exceed the percentage change of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for San

San Francisco-Oakland-San Jose (1982-84 = 100) November/November published about December 15 by the Bureau of Labor Statistics of the United States Department of Labor from the previous twelve (12) month period. The new monthly amount will be in effect beginning on the first month following the effective date of the City approved fee increase.

For each month of each calendar year, Licensee shall submit a payment to City for one-twelfth (1/12) of the amount due for that calendar year, which shall be due and payable on the first of each month.

- C. Licensee shall remit to City the further sum of 5% of all gross revenue over \$515,000.00 annually derived from all operations of the Tennis Center, Pro Shop, court reservation system for Sunnyvale Middle School and Fremont High School, and the Department-Sponsored Tennis Program for each calendar year not later than the 1st day of May of the following year. The \$515,000.00 figure will be adjusted each year by the percentage increase of court reservation fees approved by the City, not to exceed the percentage change of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for San Francisco-Oakland-San Jose (1982-84 = 100) November/November published about December 15 by the Bureau of Labor Statistics of the United States Department of Labor from the previous twelve (12) month period.
- D. Licensee shall remit to City the further sum of \$1,200.00 annually payable monthly and 50% of all net profit of Food Service operations. For purposes of calculating net profits, Licensee shall be entitled to deduct all operating and maintenance, employee salary, utility, telephone, and customary overhead items. Monthly payments shall be due on the first of each month. Payments based

on net profit for each calendar year shall be payable not later than the 1st day of May of the following year.

- E. Not later than May 1st of each year, Licensee shall furnish to City a current financial statement (or income tax return), prepared by a certified public accountant, setting forth the financial position of Licensee. The statements shall include specific sources of revenue collected by Licensee, including but not limited to court reservation fees, instruction fees, tournament fees, sales of Pro Shop goods and sales of food and beverages.

SECTION 6. COMPENSATION OF LICENSEE

Licensee, as compensation for the services performed under the terms of this License, shall be entitled by City to keep and retain the following monies, minus all operating and other expenses for which Licensee is made responsible pursuant to this agreement, and those amounts described in SECTION 5, above.

All fees and revenues collected from all operations of the Tennis Center, Pro Shop, court reservation system for Sunnyvale Middle School and Fremont High School, Tennis Center Food Services, and the Department-Sponsored Tennis Program.

SECTION 7. INDEMNIFICATION, INSURANCE BOND.

- A. Licensee shall indemnify and hold harmless the City of Sunnyvale, its officers, employees and agents, from and against any and all claims, demands, orders, decrees or judgments for injury or death or damage to person or property, loss, damage and liability (including all costs and attorneys' fees incurred in defending any claim, demand or cause of action), occasioned by, growing out of, or arising or resulting from any act or omission on the part of Licensee, or its agents or employees, arising or resulting from the performance of any services required herein to be performed by Licensee or arising from the use of the Center, tennis courts at

other sites or the Pro Shop by Licensee, or its agents or employees, or arising from the use of any buildings or improvements thereon or therein by any person or persons, or arising out of the operation or maintenance of dangerous or defective condition of the Pro Shop, or any other structure, facility or thing erected or placed in the Center and under the control or supervision of the Licensee

B. Licensee shall and will, during the period commencing on the date on which this License is issued and continuing without interruption until this License is canceled, revoked or otherwise terminated, and at its own cost and expense, provide and maintain in such form and with a company or companies satisfactory to City, a policy or policies of each of the following types of insurance to wit:

1. Single limit coverage applying to bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million Dollars (\$1,000,000.00) providing coverage on an “occurrence” basis, not an “accident” basis; provided, however, as follows:
 - a) City shall be named as an additional insured in all of said insurance policies;
 - b) A contractual liability endorsement shall be included in each insurance policy, extending coverage to include the liability assumed under paragraph A above; and
 - c) A products liability endorsement shall be added to each insurance policy in the minimum amount of Ten Thousand Dollars (\$10,000.00) for each person, and Twenty Thousand Dollars (\$20,000.00) on account of any one occurrence.

2. Workers compensation insurance and employers liability insurance for all employees of Licensee.
- C. Any policy of insurance required of Licensee shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to City, of any pending change in the liability or of any cancellation or modification of the policy.
- D. Licensee shall fill out and forward to the City an accident report on any injury that takes place in and around the Center within twenty-four (24) hours.
- E. Licensee, before exercising any of the privileges and rights hereby licensed, and at its own costs and expense, shall deposit and maintain with City at all times a minimum of One Thousand Dollars (\$1,000.00), in cash or bond, to guarantee full and faithful performance of all the duties, obligations, covenants and agreements contained in this License to be performed by Licensee or any employee of Licensee, including, but not limited to, payment of all fees, portion of gross revenue or any other monies required to be paid to City at the times and in the manner specified in this License. City may make withdrawals from this guarantee fund to cover the cost of failure to fully and faithfully perform as stated above, or to reimburse City whatever fees, portion of gross revenue or any other monies required to be paid to City which are not so paid. Licensee shall deposit additional monies to replenish the guarantee fund upon being billed by City for withdrawals from the fund. Any balance remaining shall be returned to Licensee upon the termination of this License provided that Licensee or any employee of Licensee is not in default in the payment of any fees, portion of gross revenue or any other monies required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein.

- F. Licensee shall have the sole responsibility of insuring (if it so desires and at its own cost and expense) any furnishings, fixtures, equipment, merchandise and supplies which it is required to provide under the terms of this License against loss or damage from fire, theft or any other cause.

SECTION 8. TERMINATION, REMOVAL, DEFAULT, BANKRUPTCY

- A. Upon expiration of the term of this License, or upon the sooner termination of such term from whatever cause, Licensee :
1. May remove any and all furnishings, fixtures, equipment, merchandise and supplies installed or purchased by Licensee; provided, however, that:
 - a) Any item of personal property described above not so removed shall be deemed abandoned by Licensee to City and absolute title thereto shall vest in City immediately;
 - b) Licensee is not then in default in the payment of any fees, portion of gross revenue or any other monies required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein;
 - c) Licensee shall leave the Pro Shop, food services building and Center appurtenances in good order, condition and state of repair, reasonable wear and tear and damage by the elements excepted, together with any alterations, changes, additions or improvements thereto; and
 - d) Licensee shall be responsible for any damage to the Pro Shop, food services building and Center occasioned by the removal of any furnishings, fixtures or equipment; and for such damage, if any, City shall

have lien on said items of personal property until such damages be paid.

2. Shall peaceably and quietly leave, surrender and yield up to City the Pro Shop, food services building and Center.

B. City reserves the right to terminate this License:

1. If at any time Licensee is in default in the payment of any fees, portion of net revenue or any other monies required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein (time expressly declared to be of the essence), upon thirty (30) days written notice to Licensee and Licensee fails to correct such default within said thirty (30) day period; provided, however, that:
 - a) Licensee shall not be entitled to and expressly waives any other form of demand or notice (written or oral);
 - b) City shall have the full right, at its election, to enter the Pro Shop, food services building and Center and take immediate and sole possession thereof;
 - c) City shall have the right to bring suit for and collect all fees, portion of gross revenue and any other monies required to be paid to City and which shall have accrued up to the time of entry described above;
 - d) Upon such termination, this License and all rights and privileges herein licensed shall become void to all intents and purposes whatsoever; or
2. If Licensee fails to keep in full force and effect at any time the policies of insurance or faithful performance deposit required above upon five (5) days written notice to Licensee and Licensee fails to correct such default within said five (5) day period.

- C. This License and all rights and privileges herein licensed shall immediately (and without any demand or notice written or oral) cease, determine, come to an end, and become void, and the City immediately may enter the pro Shop, food services building and Center and take immediate and sole possession thereof, without prejudice to the right of City to recover from Licensee all unpaid fees, portion of gross revenue or any other monies required to be paid to City and which shall have accrued up to the time of the entry described above, if:
1. Licensee at any time during the term of this License become insolvent, or if proceedings in bankruptcy shall be instituted by or against Licensee , or if Licensee shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Licensee shall be appointed in any suit or proceeding brought by or against Licensee, or if Licensee shall make an assignment for the benefit of creditors, or if any action is taken against or suffered by Licensee under any insolvency or bankruptcy act;
 2. During the term of the License, Garrow either dies, or by reason of incapacity, or otherwise, is unable to personally perform the duties, obligations, covenants or agreements expressly specified herein for a period of ninety (90) consecutive days.
- D. In the event of termination of the License, because of the default of Licensee upon any of the grounds set forth above or in the event of the automatic termination of this License, City reserves the right to remove any personal property belonging to Licensee from the Pro Shop, food services building or Center and to store such personal property at the sole cost and expense of Licensee , and City shall

have a lien on such personal property for and until all and any storage charges are paid.

SECTION 9. NOTICES.

Any action, notice or request required to be taken, given or made by City hereunder may be taken, given or made by the City Manager of City or such other person or persons as he may authorize for the purpose. All notices, requests or other papers required to be given or delivered to Licensee shall be deemed to be duly and properly given or made if mailed to Licensee, postage prepaid, addressed to:

Brian M. Garrow,
President & CEO
BG Tennis, Inc.
640 Hobart Street
Menlo Park, CA 94025

Or personally delivered to Licensee at such address, or at such other address as Licensee may designate in writing to City.

All notices, requests or other papers required to be given or delivered to City shall be deemed to be duly and properly given or made if mailed to City postage prepaid, addressed to:

Director of Parks and Recreation
City of Sunnyvale
P. O. Box 3707
Sunnyvale CA 94088-3707

Or personally delivered to the Director of Parks and Recreation at the Sunnyvale Office Center, 505 W. Olive Avenue, Suite 115, Sunnyvale, California, 94086, or at such other address as City may designate in writing to Licensee.

SECTION 10. NATURE OF LICENSE, MODIFICATIONS.

- A. This License is granted upon the covenant and agreement on the part of the Licensee that Licensee shall cause Garrow to devote his

entire working time and personal attention to operating the Center, Pro Shop, food service facility and Department-Sponsored Tennis Program and to promoting the Center to increase play thereon.

- B. This License does not constitute a contract of employment and the relation of master and servant, employer and employee, does not and shall not exist between City and Licensee or any of its employees. Licensee is and at all times shall be deemed to be an independent contractor.
- C. This License does not constitute a deed or grant of any easement by the City of Sunnyvale and does not constitute a lease.
- D. No assurances or inducements of any kind, not specifically set forth in the License, have been made to Licensee by anyone authorized by City to cause Licensee to execute these presents.
- E. Failure of City to insist upon a strict performance of any of the duties, obligations, conditions, covenants or agreements contained in this License shall not be deemed a waiver of any subsequent breach or default in the duties, obligations, conditions, covenants or agreements herein contained.
- F. Rights of City or Licensee hereunder shall be cumulative and not alternative and shall be in addition to any and all rights which City shall have as a matter of law.
- G. No agent, officer or employee of City has any authority to vary or extend the term of this License or any duty, obligation, covenant or agreement contained herein, or to make any statements or representations concerning this License, or the rights and privileges set forth herein, except such as are set forth in any written addendum to this License which has been approved by the Council.
- H. This License shall not become effective until receipt by the City of Sunnyvale of a copy of this License with properly signed

endorsement accepting the License subject to the conditions, duties, obligations, covenants or agreements contained herein.

- I. The City of Sunnyvale does not warrant or represent that the Center, Pro Shop or other public places to which this License relates are safe, healthful or suitable for the purpose for which they are permitted to be used under this License.

Licensee accepts the License set forth above and covenants and agrees (1) to be bound by and to comply with and perform each duty, obligation, covenant or agreement contained in the License in the manner and at the times set forth therein; and (2) to pay all fees at the times set forth herein, respectively, this _____ day of January, 2004.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

City Clerk

By _____
City Manager

APPROVED AS TO FORM:

LICENSEE
BG Tennis, Inc.

City Attorney

By _____
Brian M. Garrow, President &
CEO